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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,135	01/20/2004	Christopher G. Walls	3962 P 032	8796

7590 09/22/2005

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EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/761,135

Applicant(s)

WALLS ET AL.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) 24,25 and 34-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: attachment 1 and 2.

### **DETAILED ACTION**

1. This Office Action is in response o applicant's amendment filed on June 27, 2005.

#### ***Election/Restrictions***

2. Applicant's election without traverse of Group 1 in the reply filed on June 27, 2005 is acknowledged.
3. Newly submitted claims 34-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 34 is claiming the same limitations as recited in claim 25. The only difference is that in claim 25 the applicant use the term "tailpin" and in claim 34 use the term "member".

In the previous Office Action mailed on March 23, 2005, the examiner requires an election between Group 1 and Group 2. The election requirement was based in the fact that the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not requires that the member or tail pin has a first position and a second position and that the first position of the handle when the member is in the first position is the same as the first position of the handle when the member is in the second position. The subcombination has separate utility such as a device wherein the member is not directly connected to the lock or that the handle is not directly connected to the member.

An election was made with oral traverse on March 10, 2005. However, since the applicant do not present any argument to the restriction made on the last Office Action, the election is then considered as being without traverse.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-10,17,18,20-29, and 32 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,671,089 to Fleming et al (Fleming '089) in view of US Pat No 5,092,144 to Fleming et al (Fleming '144).

Regarding claims 1-3,20-23,26,29, and 32, Fleming '089 discloses a device (10) for operating a lock assembly (84) comprising a member (87) that is structure adapted to cooperate with the lock assembly; a handle (26) operable and adjustable connected to the member; and an adapter (101) connecting the member with the handle.

However, Fleming '089 fails to disclose that the device is capable of being mounted in either side of the door.

Fleming '144 teaches that it is well known in the art to have a device (10) for operating a lock assembly, wherein the device is capable of being mounted in either side of the door (Figures 1,2,24, and 25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a device capable of being mounted in either side of the door, as taught by Fleming '144, into a device as described by Fleming '089, in order to have a device that can adjust to any type of door.

As to claims 4 and 5, Fleming '089 discloses that the handle, when is in the unlocked position, has a generally vertical configuration and when it is in the locked position, the handle has a generally horizontal configuration (Col. 7 Lines 50-54).

As to claims 6 and 7, Fleming '089, as modified by Fleming '144, discloses that the member structure (87) is adapted to cooperate with the lock assembly configured for a right or left hand door.

As to claims 8-10, Fleming '089 discloses that the second position of the handle is rotationally displaced from the first position of the handle.

As to claim 17, Fleming '089 illustrates that the member has a generally rectangular cross-section adapted to cooperate with an aperture of a lock member of the lock assembly.

As to claim 18, Fleming '089 discloses that the handle is a thumbturn.

As to claims 27 and 28, Fleming '089 illustrates that the cross-section of the member is a quadrilateral.

6. **Claims 11-16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,671,089 to Fleming et al (Fleming '089) in view of US Pat No 5,092,144 to Fleming et al (Fleming '144) as applied to claim 1 above, and further in view of US Pat No 4,453,753 to Fayerman et al (Fayerman '753).

Fleming '089, as modified by Fleming '144, fails to disclose that the member is offset to a vertical axis. Fleming '089 and Fleming '144 disclose that the member is aligned with a vertical axis.

Fayerman '753 teaches that it is well known in the art to have a handle (20) connected to a member (30), which is connected to a lock assembly, wherein the member (30) is offset from a vertical axis (Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the member offset from a vertical axis, as taught by Fayerman '753, into a device as described by Fleming '089, as modified by Fleming '144, because the fact that the member is offset or not from a vertical axis is considered as a design consideration within the art because the position of the member does not affect the mechanism movement.

7. **Claims 19,30, and 31 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,671,089 to Fleming et al (Fleming '089) in view of US Pat No 5,092,144 to Fleming et al (Fleming '144) as applied to claim 1 above, and further in view of US Pat No 299,633 to Flinn.

Fleming '089, as modified by Fleming '144, fails to disclose that the handle has first and second apertures so as to receive a fastener to connect the member to the handle.

Flinn teaches that it is well known in the art to have a handle (A and B) connected to a member (D), wherein the handle presents first and second apertures (a, b, and c) so as to receive a fastener (f) in order to connect the member and the handle at a desire configuration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a handle with several apertures, as taught by Flinn, into a device as described by Fleming '089, as modified by Fleming '144, in order to connect the member and the handle at a desire configuration or to disengage the handle and the member at any event.

### ***Response to Arguments***

8. Applicant's arguments filed on June 27, 2005 have been fully considered but they are not persuasive.

Regarding applicant's arguments that it is improper to provide the teaching of having a latch mechanism for a door that is capable of being used in either a right or left side door, as taught by Fleming '144, into the device presented by Fleming '089 (Page 11 Line 4), the arguments presented by the applicant are not persuasive.

The applicant is based that Fleming '089 discloses a dead bolt mechanism and that Fleming '144 teaches a hook-shaped lock.

The examiner reminds the applicant that Fleming '089 discloses all the limitations presented in the claim with respect to the device. Fleming '089 only fails to disclose that the device can be used in either a right or left side door so as to have a first and a second configuration.

Fleming '144 is only used to demonstrate that it is well known in the art of latches to have a device that can be either used on a right or left side door. As seen in attachment #1, Fleming '089 shows the positions of the handle and the member in the lock and unlock conditions. In either position of the door, for a right or left side door, Fleming '089 shows that the device is capable of maintaining the same position in the unlock and lock conditions. Therefore, the rejection is maintained.

As to applicant's arguments that Fayerman '753 fails to teach the member being offset with respect to a vertical axis (Page 13 Line 1), as seen in attachment #2, Fayerman indeed discloses the member 30 offset from a vertical axis. Therefore, the rejection is maintained.

As to applicant's arguments that there is no motivation to combine the teachings of Flinn with the device described by Fleming '089 (Page 13 Line 4), the applicant's arguments are not persuasive. The examiner has presented that it is well known in the art to have a handle connected to a member, wherein the handle presents first and second apertures so as to receive a fastener in order to connect the member and the handle at a desire configuration or to disengage the handle from the member in any event (see cited prior art Flinn, Moore '238 and '828, Brady, Cameron and



Towne). The fact that the latch devices are different is irrelevant. Therefore, the rejection is maintained

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-272-7049.

Art Unit: 3676

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

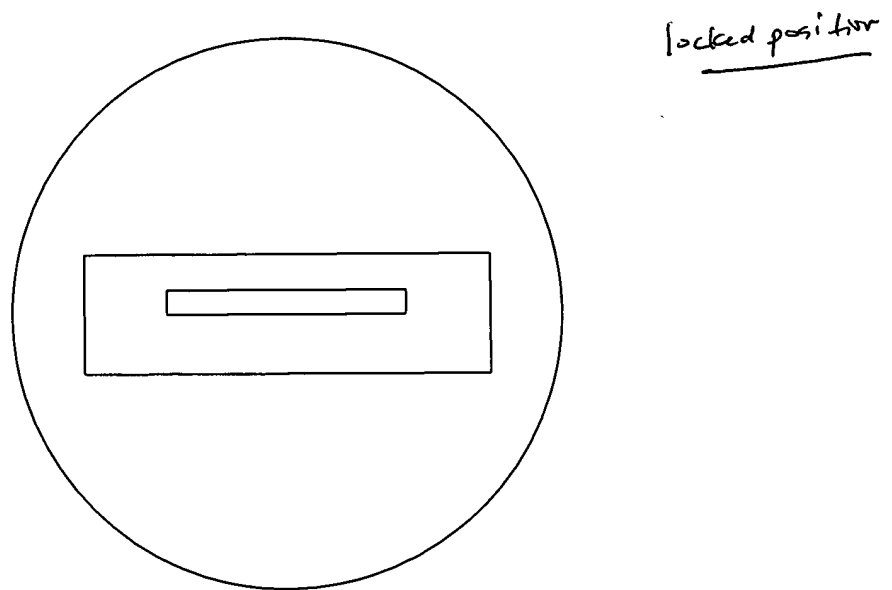
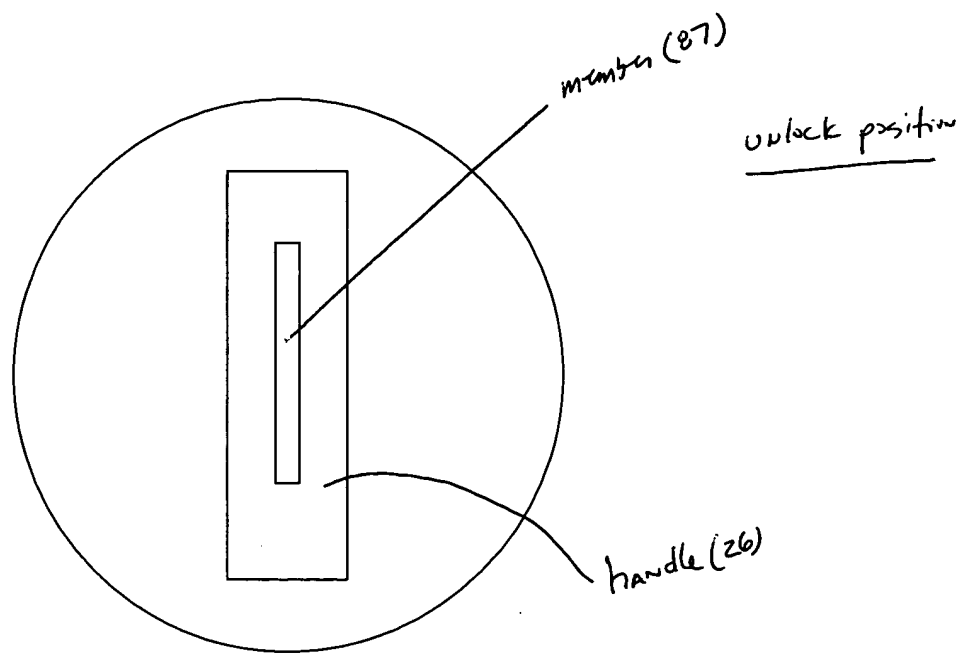
C-L-

Carlos Lugo  
AU 3676

September 15, 2005.

  
**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**

Fleming '029



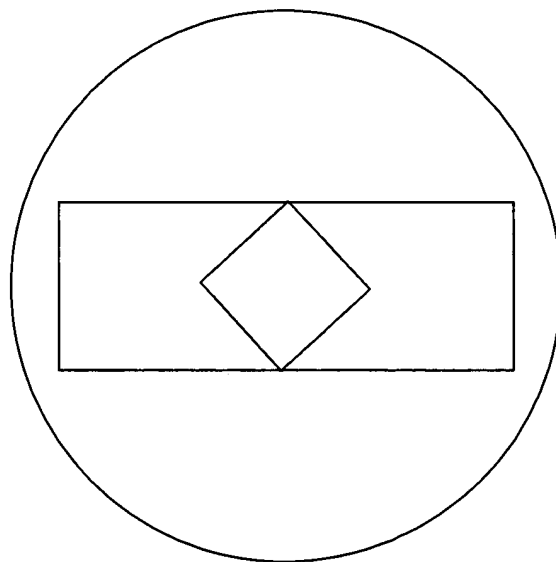
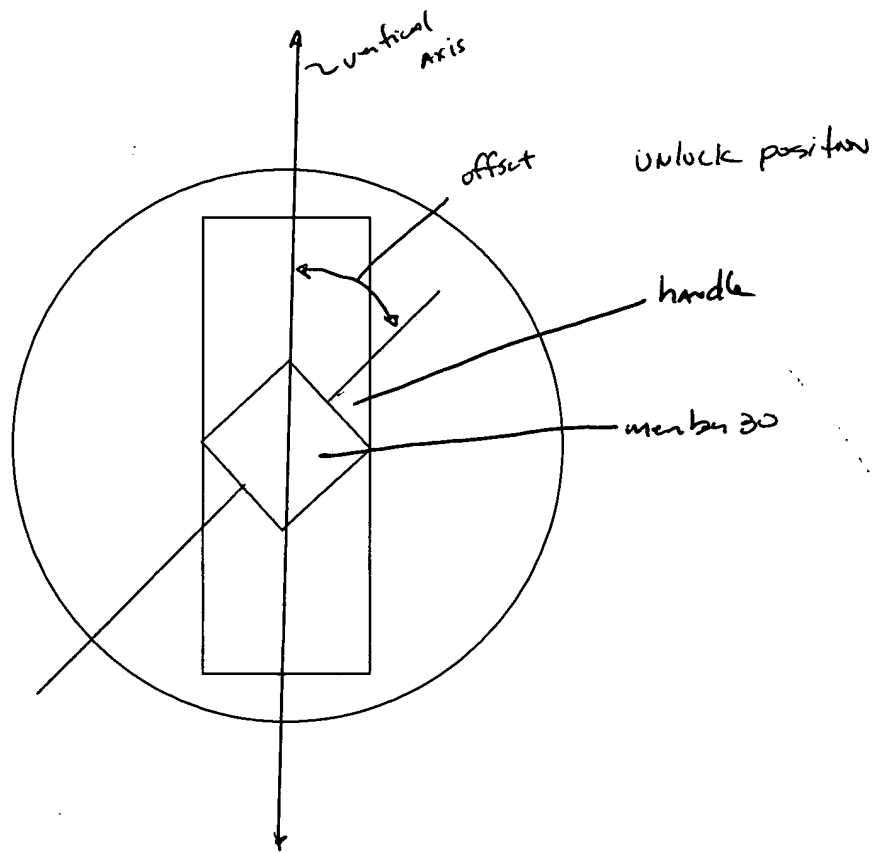
Attachment #1

Fleming '089

in combination with

Fleming '144

Fayesman '753



Attachment #2